89-1619

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

RAY RAFT, AKA FAROKH R. RAFATDJAH,
Petitioner

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent

On a Writ of Certiorari to the Court of Appeal of California, Second Appellate District.

PETITION FOR CERTIORARI

GEORGE WEST
Counsel for Petitioner
West, Powell & Glass
2650 W. Temple Street
Los Angeles, CA 90026
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QUESTIONS PRESENTED

1. Whether Petitioner was denied due process by the thirty three month delay between the fire and the filing of criminal charges for arson against Petitioner.

2. Whether Petitioner was denied due process by the trial court's refusal to order a commission for a deposition in Iran, pursuant to California Penal Code Section 1349 et. seq.

3. Whether Petitioner was denied due process by the trial court's refusal to allow the transcript of the testimony of Said Mobares, into evidence, pursuant to California Penal Code Section 1362.

PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case in the United States Supreme Court. The Petitioner, Ray Raft, hereby petitions the United States Supreme Court for a Writ of Certiorari for review of a decision of the California Court of Appeal, Second Appellate District, Division Four, affirming his conviction for arson under former Penal Code, Section 448(a).

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IN THE
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On a Writ of Certiorari to the Court of Appeal of California, Second Appellate District.

OPINION BELOW

The opinion of the court of Appeal of the State of California, Second Appellate District, Division Four, is printed in Appendix 1 hereto, not for publication.

JURISDICTION

The Judgment, printed in Appendix 1, attached hereto, which Petitioner seeks to have reviewed is dated May 22, 1989.

Review in the California Supreme Court was denied on August 30, 1989, see Appendix 2.

The jurisdiction in this Court is invoked under Section 1257(a) of Title 28 of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

California Penal Code, Section 1335-1337, 1349-1362, and 1385.

California Evidence Code, Section 1230.

Due process clause of the Fourteen Amendment of the United States Constitution.

STATEMENT OF CASE

On August 4, 1982, the Petitioner was charged on two counts, with violation of Penal Code Section 448(a), arson, felony, and Penal Code Section 548, the destruction of property with intend to defraud the insurer of said property, also a felony.

The arson occurred on November 3, 1979 in the City of

Los Angeles.

That is, on November 3, 1979, at approximately 3:30 a.m., a car wash and gas station—managed by Petitioner—was damaged in a fire, caused by a gasoline explosion.

Fire investigators found that two gasoline pump nozzles had been cut from the pump hoses to part of the property.

After the explosion and after the fire fighters arrived at the scene of the fire, the Petitioner was found on the property severely injured by the explosion and the fire-requiring 13 days of hospitalization in the burn ward.

Although the matter was investigated by the Los Angeles District Attorney's Office immediately after the incident, the information was brought almost three years later on August 4, 1982.

Also, in the interim, the matter was reviewed by a Federal Grand Jury in August of 1981 and without any indictments being issued.

Testimony corroborating the defense was obtained from Said Mobares through a deposition by a commission in Iran, pursuant to Penal Code, Section 1385.

Mobares' deposition contained information regarding several other persons who were at the car wash and gas station before the fire and who were responsible for setting the blaze. Furthermore, Mobares' deposition confirmed the Petitioner's testimony that he was a Pro-Shah activist—who had been earlier verbally threatened and now was physically injured at the hands of others, exclusively at that troubled time in America and Iran.

Notwithstanding Mr. Mobares' unavailability at trial, his deposition testimony was excluded by the Trial Court as inadmissable heresay.

There was evidence introduced at trial that the Petitioner's employee at the gas station and his wife—as well as the Petitioner, himself—had received numerous threatening phone calls at home, his office, and the gas station.

All of the calls were in Farsi and were of a political nature.

The callers wanted the Petitioner, because of his influential status in local circles, to help them with their Anti-Shah cause.

The Petitioner agreed to meet these people on November 2, 1979 at 7:00 or 8:00 p.m. at the gas station. Furthermore, Petitioner was asked to have his employee, then on duty, to leave the premises.

Shortly thereafter, two masked men arrived at the gas station, with a .38 revolver.

Next, the Petitioner was escorted by the men to the entrance of the car wash, where he was ordered to kneel down with his arms up.

After being struck in the head, the Petitioner next remembered that he was in the hospital, recovering from his head and burn injuries.

It was Petitioner' position at trial that, since he and his family were outspoken critics of the Ayatollah Khomeini regime, they have been victimized by the political enemies, rather than the Petitioner being the perpetrator of an arson.

It should be noted that the Petitioner did not collect any insurance proceeds from the insurance company as a result of the fire; but rather, used his own funds to restore the premises—which were ultimately sold to a third party.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner urges that review by the Supreme Court is necessary:

1. To prevent a grave and irreparable miscarriage of justice by allowing an innocent man, to suffer a felony conviction and jail sentence.

2. Pursuant to 28 U.S.C. Section 1257(a) to protect Petitioner from the deprivation of rights, privileges, and immunities under the due process clause of the United States Constitution.

CONCLUSION

Consequently, Petitioner respectfully urges the Supreme Court to render a review of the decision of the Court of Appeal of the State of California, Second Appellate District, Division Four for the grounds and reasons contained herein.

ARGUMENT

1. *Petitioner's Due Process Rights Were Violated By The 33 Month Delay Between The Fire And The Filing Of Criminal Charges.*

The unusual and lengthy delay between the fire and the filing of criminal charges unduly prejudiced the Petitioner's case in that defense witnesses were lost [one died under suspicious circumstances and one was assassinated], a defense witness left the jurisdiction [Said Mobares], and the related problems attended to such a lengthy delay. *United States v. Loud Hawk*, [1984] 741 F. 2d 1184.

Moreover, no legitimate grounds justifying the delay have been, or for that matter, could have been shown for the unusual delay—thus warranting a dismissal of the case on due process grounds alone. *Penney v. Superior Court* [1972] 28 Cal.App. 3d 941.

Moreover, the personal prejudice suffered by the Petitioner and his family—due to the unusual and unexplained delay was clearly financially, physically, and emotionally crushing for almost three years—warranting dismissal upon this basis as well. *People v. Hartman* [1985] 170 Cal.App. 3d 572:

> "The primary function of the office of prosecutor is to diligently and vigilantly pursue those who are believed to have violated the criminal codes of the State...in that regard, the guiding light of due process illuminates the field of combat and defines the depth of duty to be obeyed...while hard blows may be struck against an opponent, the strike **may not be withheld without warrant until such time as occasions an adversarial disability** the combination of circumstance chronicled here violated fundamental fairness, the touchstone of due process."

At the very least, cumulatively, it should be concluded that the unreasonable delay in filing formal charges violated the Petitioner's due process rights of fairness and has resulted now in a grave miscarriage of justice, requiring the granting of the Petition For Review.

2. *Due To The Trial Court's Refusal To Order A Commission For A Deposition In Iran, The Transcript Of Said Mobares, At A Minimum, Should Have Been Allowed Into Evidence.*

Apparently due to the volatile and potentially dangerous situation then existing in Iran, the Trial Court refused to order a Commission for the deposition of Said Mobares.

Petitioner would submit that the relevant portions of the Penal Code, relating to depositions, are not so inflexible so as to be incapable of affording Petitioner some type of relief in light of exculpatory evidence to be adduced on his behalf.

Moreover, in light of the Trial Court's refusal, it is clear that the transcript of the Said Mobares' deposition could have, and more importantly, should have been, admitted into evidence for consideration of the trier-of-fact because of the important exculpatory and corroborating evidence contained therein.

Lastly, rather than a full-scale exclusion of the Said Mobares' deposition, the Trial Court could have, and should have fashioned an appropriate limiting instruction or a cautionary instruction concerning its use by the tier-of-fact.

The deposition transcript surely could have been left to the trier-of-fact on the issue of credibility and weight.

Lastly, it is respectfully submitted that the Said Mobares' deposition could have been introduced into evidence as a statement against penal interest, pursuant to Evidence Code, Section 1230.

The Trial Court concluded that there was no penal interest to be considered. However, the deponent Said Mobares, himself, testified:

"Q. Do you fear any reprisal from anyone for either answering or not answering these questions, if so who?

A. Yes, from many people, with my background you always fear reprisal."

Said Mobares' deposition, pg. 1, L.18 - 21.

Also, it is clear that, due to the constant state of upheaval and the emergence of different factions of political

activist, Said Mobares could very well at any time face reprisals and/or repercussions for his testimony in this regard.

Consequently, it seems only fair that in light of the showing at trial of the political nature of Petitioner's defense, the admission of Said Mobares' deposition should have been allowed.

Petitioner respectfully submits that its exclusion amounted to prejudicial error and supports a reversal of the conviction, allowing a new trial with the admission of the Said Mobares' deposition into evidence.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that the Supreme Court should grant the Petition For Review.

At best, the People had only a circumstantial case against the Petitioner.

In defense, the Petitioner should have been allowed to have a speedy trial, as is his constitutional right and entitlement.

Absent that, and in light of the Trial Court's rulings on the commission for the Iranian deposition, the Petitioner should have been allowed to introduce into evidence the Said Mobares' deposition.

In the last analysis, the unusual delay in filing charges against the Petitioner and the Trial Court's exclusion of the Mobares's deposition have both effectively denied the Petitioner a fair trial on the merits.

That is, witnesses have been lost, memories have faded and most importantly and unfortunately, the crucial deposition of Said Mobares was excluded so that the Petitioner was reduced to putting on a defense that was emasculated by delay and evidential exclusions.

Simple justice requires that miscarriage of justice be corrected by the granting of the Petition For Review.

Dated: _____ Respectfully submitted,

_____

GEORGE WEST
Attorney for Petitioner,
Ray Raft aka Farokh R.
Rafatdjah

APPENDIX 1

NOT FOR PUBLICATION
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,	)	No. B020686
	)	
Plaintiff and Respondent,	)	(Super.Ct.No. A 377261)
	)	
v.	)	
	)	
RAY RAFT,	)	
	)	
Defendant and Appellant.	)	
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County. Ernest M. Hiroshige, Judge. Affirmed.

Kim James Kakadelas, under appointment by the Court of Appeal, for Defendant and Appellant.

John K. Van de Kamp, Attorney General, Steve White, Chief Assistant Attorney General, Edward T. Fogel, Jr., Senior Assistant Attorney General, Donald E. De Nicola, Supervising Deputy Attorney General, Paul C. Ament, Maria J. Perez, and William R. Weisman, Deputy Attorneys General, for Plaintiff and Respondent.

Ray Raft appeals the judgment entered following a jury trial in which he was convicted of arson. (Former Pen. Code, Section 448a.)

He contends: "I. Due process rights of the appellant were violated by the thirty three month delay between the fire and the filing of criminal charges. II. The trial court abused its discretion and erred by denying appellant's motion to allow the taking of a foreign deposition. [and] III. The trial court erred by not admitting into evidence at trial the deposition testimony of Said Mobares."

Appellant was charged with arson and insurance fraud (Pen. Code, Section 548) after a November 3, 1979, explosion and fire at appellant's gas station-carwash, the Uni Service Car Wash, located the corner of 6th Street and Catalina in the City of Los Angeles.

The evidence at trial established that appellant was present at his gas station in the early morning hours of November 3, 1979. He sent his employee, Esmaeil "Hoggie" Rahimipour, on an errand in his pickup truck. Circumstantial evidence and the expert opinion of the City of Los Angeles Fire Department arson investigator, Terence Depackh, established that appellant cut off the nozzles on two gas pumps and used ordinary garden hoses to pump gasoline into the carwash and station structures.

Appellant testified in his defense. He said that pro-Khomeini supporters asked to meet him at the station alone and, when they arrived, knocked him unconscious. When he regained consciousness, he was in the hospital. Appellant also claimed that he had no motive for arson as he had other business interests. He also asserted that Hassan Nazary, a close Iranian friend, was the beneficial owner of the station.

Mr. Nazary traveled from Iran for the trial and corroborated appellant's claims. Other witnesses corroborated that appellant had received threats immediately before the fire. Appellant's family reportedly held influential positions in the Shah of Iran's regime. Character witnesses, two of whom were California politicians, testified to their opinions that appellant was not a arsonist. Assistant Chief Reynaldo

Rojo said he was told by an elderly woman at the fire scene that she saw a yellow Cadillac speed off after the explosion. Appellant claimed he had lost all the financial records necessary to bolster his defense.

DENIAL OF DUE PROCESS AS A RESULT OF PRE-CHARGE DELAY

Appellant contends that the 33-month delay between the November 3, 1979 fire, and the August 4, 1982, filing of the felony information, prejudiced his ability to present a defense at trial and denied him due process.

On appeal, he specifically complains that:

1. He believed that he had been cleared on the charges and was prejudiced because he was unable to "actively [pursue] his defense" and did not have sufficient time to "gear-up" for the trial after he was notified of the charges.

2. Independent witnesses from the neighborhood, whose identities were not ascertained by Fire Department personnel at the time of the fire, "may have been discovered had formal charges been filed earlier."

3. Three potential witnesses died before trial, and third parties who were allegedly responsible for the arson left or fled the jurisdiction and were unavailable for trial.

4. Tape recordings of appellant's and Mr. Rahimipour's interviews with state authorities, which could have been used to refresh their memories, were lost before trial.

5. "Comprehensive business records" which could have been used to refute the People's evidence that appellant suffered business losses were lost "due in part to the passage of time."

6. Both the prosecution and defense witnesses had

"difficulty in testifying because of faded memories."

7. Appellant suffered the social disruption and anxiety that accompanied the unresolved criminal charges, and suffered high blood pressure, heart ailments, financial losses and family problems due to the delay.

Appellant also asserts that the evidence does not support the People's claim in the trial court that the delay was occasioned by legitimate investigative needs.

Appellant first raised the issue of the unjustified delay in the filing of charges in his motion to set aside the information. (Pen. Code, Section 995.) The trial court treated the pretrial motion as a motion to dismiss and denied it, finding insufficient prejudice. The trial court found that only the delay during the assumption of federal jurisdiction over the prosecution was unjustified, "if at all," by the need to investigate the arson-related charge of insurance fraud.

Appellant raised the issue again in his motion for new trial and the trial court rejected his contention of a denial of due process.

Appellant's complaints are without substance. Appellant never developed during trial, or after he had presented his defense, any record or additional evidence disclosing that the presentation of his defense was prejudiced by the prefiling delay. (See *People v. Archerd* (1970) 3 Cal. 3d 615, 641; *People v. Price* (1985) 165 Cal.App. 3d 536, 542; *People v. Abraham* (1986) 185 Cal.App. 3d 1221, 1225-1226.) Absent some showing of actual prejudice, he is not entitled to a reversal. (*People v. Archard, supra.* 3 Cal. 3d at p. 641.)

The evidence adduced in appellant's pretrial motion to dismiss on due process grounds established that state authorities had an ongoing investigation into the related insurance fraud charge from the date of the offense until July, 1981.

Mr. Depackh explained that the state investigation of fraud hinged in part on evidence developed by the insurance company's investigation of appellant's insurance claim, and appellant's claim was unresolved in that the appellant had not completed an examination required by the insurance company because he refused to disclose certain requested personal and corporate records.

Mr. Depackh also explained that appellant's case had taken a strange turn. Federal authorities had taken over the prosecution of appellant in July of 1981 under the auspices of a joint tasks force. However, in November of 1981, in the aftermath of a decision in *United States v. Gere* (9th Cir. 1981) 622 F. 2d 1291, 1295-1296, federal authorities decided to return the prosecution to the state. During the approximate six months the federal authorities were pursuing appellant's case, the state authorities had no hand in the matter.

The prosecution was returned to the state in early 1982. The felony complaint was filed almost immediately thereafter, on March 18, 1982. Appellant did not surrender on the bench warrant until May, 1982. After a preliminary hearing, appellant's information was filed on August 4, 1982.

It is settled that a "prosecutor is entitled to reasonable time in which to investigate an offense for the purpose of determining whether a prosecution is warranted" and the "delay must be purposeful, oppressive, and even 'smack of deliberate obstruction on the part of the government,' before relief will be granted. [Citations.]" (*People v. Archerd, supra*, 3 Cal. 3d at p. 640.)

Appellant's failure to show prejudice contrasted with the strong showing of a justifiable reason for the delay.

Deputy District Attorney Gerald Cohen of the Major Frauds Division was in charge of appellant's investigation. He testified in the pretrial hearing that he made no repre-

sentations to appellant of his former defense counsel, one Howard Weit, that appellant would not be prosecuted. He stated that he always viewed appellant's investigation as likely to result in a charge of insurance fraud.

There is no basis whatsoever in this record for appellant's claim that he had insufficient time to prepare his defense trial.

No state action deprived appellant of potential physical evidence or witnesses present at the scene. Fire Department personnel had no duty to "gather up" evidence at the scene of the fire which might eventually prove useful to the defense. (*People v. Hogan* (1982) 31 Cal. 3d 815, 851; see *People v. Callen* (1987) 194 Cal.App. 3d 558, 561-562.) Chief Rojo testified at trial to the elderly woman's statement that a yellow Cadillac sped from the scene of the fire.

The tape recordings and transcripts of the state authorities' interviews with appellant and Mr. Rahimipour were available by request from Mr. Depackh. Appellant never established that the financial records subpoenaed from him by the federal authorities were unattainable by a state court subpoena or that he had no other means from which to reconstruct those records to support his defense.

As for the unavailability of the deceased witnesses for trial, former defense counsel's representation as to the materiality of Abi Abdol's and Hugh Taylor's testimony were vague. The March 2, 1980 and February 25, 1981 deaths of these two men happened before any period of arguably unreasonable delay occurred.

The deceased Nezar Atlassi was assertedly a participant in the arson. He died on June 1, 1982. The representations establishing materiality of his testimony did not come from a source independent of appellant. Mr. Atlassi's death had no causal link to any unreasonable delay.

Mr. Mobares' unavailability also was not caused by any delay. Mr. Mobares' Iranian deposition established that he was in the United States between 1979 and 1985, long after the charges were filed against appellant. No improper governmental action caused his unavailability for trial. (See *People v. Majia* (1976) 57 Cal.App. 3d 574, 581.)

This record fails to show evidence of dimming memory causing appellant's defense to be prejudiced. Most of the witnesses made statements to Mr. Depackh shortly after the fire, from which their memories could have been refreshed.

Appellant never proffered any evidence to support his claims of anxiety, ill health, family problems and financial failure directly attributable to the pending prosecution.

Appellant's defense was at best highly incredible. It would not have been bolstered by the speculative evidence that he claims was lost to him during the delay occasioned by an investigation of the arson-related insurance fraud charge.

Substantial evidence supports the trial court's pretrial finding against appellant's claim of a denial of due process. As explained above, no post-trial showing of prejudice compels a contrary result. Appellant's claim of a denial of due process arising from prefiling delay therefore must fail. (*Scherling v. Superior Court* (1978) 22 Cal. 3d 493, 505; *Jones v. Superior Court* (1970) 3 Cal. 3d 734, 740.)

APPOINTMENT OF A COMMISSION TO EXAMINE SAID MOBARES

Penal Code Sections 1349, et seq., establish a procedure whereby a trial court may appoint an independent commission or commissioner to submit interrogatories to a nonresi-

dent material witness for use at trial. Appellant contends that the trial court's refusal to appoint a commissioner to travel to Iran to administer such an examination was an abuse of discretion.

In support of his motion for a nonresident examination, appellant submitted to the trial court a deposition of Said Mobares taken at appellant's request by his attorney in Iran.

The trial court stated it had read and considered the submitted deposition and placed the deposition in a "confidential file."1/

The trial court found it had no basis upon which to believe the testimony was reliable, although, on its face Mr. Mobares' testimony went "into an actual incident that...could have been relevant." The trial court observed:

"It seems to me the only way I could authenticate [the examination] is to have a commissioner appointed from California to go to Iran, not appoint someone in Iran."

The trial court then denied appellant's request for the nonresident examination. The trial court also refused defense counsel's suggestion that a commissioner from a neutral country be appointed and stated that it knew no reliable Iranian-based condidate for the appointment.

Penal Code Section 1354 requires an examination of the witness only where the trial court is "satisfied on the truth of the facts stated, and that the examination of the witness is neccessary to the attainment of justice..."

The trial court gave little credence to the deposition testimony and found that the hostilities between the United

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1. The Mobares' deposition submitted to the trial court is not part of the appellate record. (See Cal. Rules of Court, Rule 33(b).)

States and Iran made the appointment of a commission or commissioner wholly impractical. The trial court properly exercised its discretion in denying appellant's request. (See *People v. Stewart* (1924) 68 Cal.App. 621, 626.)2/

Penal Code Sections 1335 and 1336 have no application in this case, as they apply to conditional examinations taken of witnesses about to leave the state or who are "so sick or infirm as to afford reasonable grounds for apprehension that he or she will be unable to attend the trial." Code of Civil Procedure Section 2016, subdivision (a), authorizing depositions in civil cases, likewise is not applicable.

THE MOBARES DEPOSITION'S EXCLUSION FROM EVIDENCE

In lieu of the appointment of a commission for the examination of a nonresident, appellant requested taht the trial court permit the deposition he had taken in Iran of Said Mobares be admitted into evidence as a statement against penal interest. (Evid. Code, Section 1230.) On appeal, he contends that the refusal to allow this crucial testimony to be read into evidence compels a reversal. This contention has no merit.

The deposition is not admissible in evidence as an exception to the heresay rule. As the trial court observed Mr. Mobares was "standing behind a wall in Iran protected and knows that he will never be prosecuted in the United States." Thus, the making of the statement did not "so far" subject Mr. Mobares to the risk of criminal liability that a "reasonable man in his position would not have made the statement unless believed it to be true." (Evid. Code, Section 1230.)

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2. A petition for writ of mandate or prohibition entitled, "Ray Raft v. Superior Court of Los Angeles County, Ira Reiner, Real Party in Interest," B012004, which raised this same issue, was summarily denied on March 22, 1985.

Since the deposition did not meet the express requirements of Penal Code Section 1230, and the trial court expressed doubts about the evidence's reliability, the trial court did not err in excluding this evidence at trial. (*People v. Rice* (1976) 59 Cal.App. 3d 998, 1007.)

The judgment is affirmed.

NOT FOR PUBLICATION IN THE OFFICIAL REPORTS

GOERTZEN, J.

We concur:

McCLOSKY, Acting P.J.

GEORGE, J.

APPENDIX 2

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Second Appellant District, Division Four,
No. B020686
S010949

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

THE PEOPLE, Respondent

v.

RAY RAFT, Appellant

Appellant's petition for review DENIED.

LUCAS

CHIEF JUSTICE

APPENDIX 3

SAID MOBARES

was sworn and testified as follows:

EXAMINATION

BY MR. H. RAJAI:

Q. Mr. Mobares, you have been asked here today as witness to the November 3, 1979 fire/arson and attempted assassination of Mr. Farokh Reza Rafatjah at Uniservice Car Wash in the City of Los Angeles, State of California in the United States of America. What is your full name and date of birth?

A. Said Mobares, August 8, 1957.

Q. What is your place of residence?

A. Narmak, Tehran, Iran.

Q. Has anyone threatened you or anyone close to you to get you to give this deposition or not to give this deposition, if so, who?

A. No one.

Q. Do you fear any reprisal from anyone for either answering or not answering these questions, if so who?

A. Yes, from many people, with my background you always fear of reprisals.

Q. Who are they, could you name them?

A. No I can not because I don't know anyone in particular.

Q. Are you presently under the influence of any drugs,

narcotic or alcohol, if so what?

A. No.

Q. Is there any reason not otherwise stated why your deposition should not be taken today, if so why?

A. Not that I know of, unless I have been set up.

Q. Do you have any difficulty with the understanding of the English language?

A. Not at all.

Q. Is there any other language you prefer to give this deposition in?

A. No, I prefer English.

Q. From January 1, 1979 to present, state the periods of time you were present in the Los Angeles, California U.S.A. area.

A. I cannot answer exactly, but I can say from January, 1979 to January, 1985, I spent more than 80% in the U.S. and most of that in Los Angeles, I can't give you a break down.

Q. What is your current citizenship?

A. Iranian.

Q. Do you possess a valid passport from your country of citizenship, if so, when does your passport expire?

A. No.

Q. Does your passport contain any valid visa for permission to enter the U.S.A.?

A. No my passport and visa is expired.

Q. What is your present occupation?

A. Engineer.

Q. Do you hold any political office?

A. No.

Q. In the last ten years what has your political affiliation been?

A. For freedom of Iran and Iranian people from the domination of Imperialist.

Q. What do you mean by that, could you be more specific?

A. Perhaps I can but I will not, my political beliefs only is my business.

Q. Were you ever hired to commit acts of violence against the Shah of Iran or his supporters until he was over thrown in 1979?

A. Not personally against him.

Q. How about his supporters?

A. I only will answer you if you want to be more specific concerning the individual.

Q. Were any of these acts committed within the United States, if so, what were they, where and when were they committed?

A. Again, I only will answer, if you want to be more specific about the individual.

Q. Did you specifically contact or employ a Mr. Nezar Atlasi to help you commit acts of violence against any Shah supporter or Mr. Farokh Reza Rafatjah?

A. I did not personally employ Mr. Atlasi.

Q. How did you meet Mr. Nezar Atlasi?

A. I was introduced to him, by Mr. Hassan Shahin.

Q. What was the purpose of the introduction?

A. Mr.Shahin recruited Mr. Nezar Atlasi, who worked for Uniservice Car Wash, and myself to help him put fear into Mr. Farokh Reza Rafatjah in hope to recruit him to use his influence for our political cause.

Q. What influence did you think he had?

A. He was well connected with very influential American politicians.

Q. Who hired you to try and influence or cause fear in Mr. Farokh Reza Rafatjah, and was that related to the fire/arson on November 3, 1979 at Uniservice Car Wash on the corner of 6th and Catalina, in the City of Los Angeles/County of Los Angeles, State of Californian the United States of America?

A. Yes, Mr. Hassan Shahin hired us to help him on November 3, 1979 with the Uniservice Car Wash fire to scare Mr. Farokh Reza Rafatjah.

Q. Who all helped you in your mission of fire/arson on the night of November 3, 1979 on the corner of 6th and Catalina, the place called Uniservice Car Wash in the City of Los Angeles, please explain as best as you can.

A. Mr. Hassan Shahin recruited Mr. Nezar Atlasi and

myself and two Americans and he provided us with a vehicle along with any finances related to this.

Q. Did Mr. Hassan Shahin pay you personally for the act of violence against Mr. Farokh Reza Rafatjah and Uniservice Car Wash, located at 6th and Catalina, City of Los Angeles, California?

A. I never received money for that purpose but as I said Mr. Shahin took care of any expenses related to this matter.

Q. Did Mr. Nezar Atlasi receive any money for that purpose?

A. Not to the best of my knowledge, he always claimed everything he did was for the freedom of his people and his country not money.

Q. How about the two Americans, did they receive any money for the fire/arson of Uniservice Car Wash and Mr. Farokh Reza Rafatjah?

A. I was told they were hired by Mr. Hassan Shahin and paid by Mr. Hassan Shahin.

Q. How much did they receive for the fire/explosion of 6th and Catalina, Uniservice Car Wash in Los Angeles on the night of November 3, 1979.

A. I am not aware of the amount paid to them.

Q. Why was Mr. Nezar Atlasi, employee of Uniservice Car Wash located at 6th and Catalina, Los Angeles, California used to help you with the fire/explosion?

A. Because he had the keys to Uniservice Car Wash and he was aware of Mr. Farokh Reza Rafatjah habits, so he could give us all the inside information and help the two Americans to get the car wash ready for the fire.

Q. In one of your statements you said Mr. Hassan Shahin also provided you with a vehicle, was that a car and used for that night of November 3, 1979 for the act of violence at 6th and Catalina, Uniservice Car Wash in Los Angeles and Mr. Farokh Reza Rafatjah?

A. Yes.

Q. What kind of car was it and what year?

A. I don't remember exactly the year, it was a late model Seville.

Q. What was the license number?

A. I don't know.

Q. What color was it?

A. Light yellow.

Q. What color interior?

A. I think it was black as a matter of fact, I am sure it was.

Q. Where did you pick up the car?

A. I don't recall the address and exact location.

Q. Could you remember the city?

A. Yes, Long Beach.

Q. The two Americans you are talking about who helped you on the night of November 3, 1979 in the act of violence/arson at 6th and Catalina, Uniservice Car Wash in Los Angeles, where did you meet them that night on November 3, 1979?

A. I was given a time and place by Mr. Hassan Shahin in Long Beach.

Q. Where was the place and time?

A. I don't know the exact address, it was at a bar, myself and Mr. Nezar Atlasi picked them up in the early evening.

Q. What time and name of the bar?

A. I don't recall the name of the bar, but it was about 6:00 p.m.

Q. Could you give me a description of these two Americans?

A. I can tell you for sure one them was black, tall and well built, the other one I would say was medium tall, dark hair and dark skin, but I am not sure if he was Latin or fair skinned black.

Q. Did they have any obvious marks on their body you could see?

A. Not that I can remember.

Q. Do you know their address of residence?

A. No, but they claim they were from Long Beach.

Q. To your knowledge did they carry out the arson of the Uniservice Car Wash at 6th and Catalina in the City of Los Angeles?

A. All we were told by Mr. Hassan Shahin, was one of them was Big John, the black guy, the second individual was Joe.

Q. You do not know their last name?

A. No, we were never told by Mr. Hassan Shahin or the two Americans themselves.

Q. Why did Mr. Hassan Shahin employee this Big John and Joe you refer to?

A. I was told they were professional contractors.

Q. Were they armed?

A. Yes they were.

Q. In what way were they armed?

A. The best I could tell, they both had revolvers.

Q. Were you or Mr. Nezar Atlasi armed anyway?

A. I was not, but they offered both of us revolvers that night for emergencies, but I refused to accept.

Q. Did Mr. Nezar Atlasi accept an fire arms?

A. Yes he did, later on in the morning he returned it to the two guys.

Q. Which two guys?

A. To Big John or Joe, I am not sure which one.

Q. Where were you and Mr. Atlasi located at the time the fire/arson was being set at 6th and Catalina, Uniservice Car Wash in Los Angeles?

A. We were setting in the car in an alley adjacent to Uniservice Car Wash.

Q. Who was the driver of the car that night on November 3, 1979?

A. I was.

Q. Did you see or hear the conversation between Mr. Farokh Reza Rafatjah and Joe and John or both?

A. No.

Q. Did you see them at any time while you were setting and waiting in the alley?

A. Yes, I saw John and Joe bring Mr. Farokh Reza Rafatjah outside.

Q. Could you tell me where they were located, could you point out any specific location in the car wash?

A. The only place I could see was right before the explosion went off, was the front entrance of the car wash.

Q. When was the last time you saw Mr. Farokh Reza Rafatjah on the night of November 3, 1979 and where was the location?

A. He was at the entrance of the car wash near the alley at 6th and Catalina, Los Angeles, California with Joe and John.

Q. What position was he?

A. What do you mean?

Q. Was he standing, setting, laying, explain please?

A. The best I can remember, he was bending with his back toward us when Big John hit him on the head and the fire started.

Q. What did Big John and Joe do at that time?

A. They returned to the car and gave me orders to take off.

Q. What direction did you take off?

A. I don't remember, all I know is that I went toward 6th Street but I don't remember if I went left, I believe the direction was left, I went the way I was told to go by Mr. Nezar Atlasi.

Q. Where did you go from there, 6th and Catalina, Uniservice Car Wash in Los Angeles?

A. To Mr. Nezar Atlasi apartment near by.

Q. What was his address?

A. I do not remember the address but I knew how to get there.

Q. Were anyone else involved that night that you know of on November 3, 1979 with the explosion/arson of Uniservice Car Wash in Los Angeles?

A. Yes, I don't know who they were, but there was a couple of guys hired by Mr. Hassan Shahin to watch Mr. Rahimipoors apartment. I only know he hired them so they would make sure Mr. Rahimipoor did not return to Uniservice Car Wash before our job was complete.

Q. Do you know who they were, their names or race?

A. No, I was only told they would be at Mr. Rahimipoors apartment.

Q. Was your mission along with Mr. Atlasi, Joe and Big John to assassinate Mr. Farokh Reza Rafatjah at night of November 3, 1979 at Uniservice Car Wash at 6th and Catalina in Los Angeles?

A. No, I cannot speak for the others but my own personal involvement was for reason to persuade Mr. Farokh Reza Rafatjah to help us toward our political causes.

Q. Were you ever successful to recruit Mr. Farokh Reza Rafatjah to help you?

A. Unfortunately no.

Q. Why not?

A. Because I think he is a traitor to his country and his people.

Q. Which country and people?

A. Iran and Iranians.

Q. Why do you think he is a traitor, do you think he dislikes Iran and Iranians?

A. No, but I feel he has a blind love for American Flag and American imperialism.

Q. What caused you to return to Iran after the fire/arson of November 3, 1979 at Uniservice Car Wash in Los Angeles, explain in detail.

A. My partner, Mr. Nezar Atlasi dies with a suspicious death, which I believe he was killed by American agents, but everyone was told he died of a heart attack, but I knew better. He was approximately thirty years old, athletic, in good health, with no previous heart condition or serious illness. And later Mr. Hassan Shahin was shot and killed in Los Angeles by assassins, which again I believe was done by American agents, so I was certain my days were numbered, so I left for home.

Q. Why do you think American agents would spend

their time on Mr. Nezar Atlasi, Mr. Hassan Shahin and yourself?

A. We are not the only ones, there are other Iranians that have been and continue to be assassinated in the U.S.A., because they are trying to free their people and country from influence of American imperialism.

Q. Are you willing to testify under oath to these questions in a United States court of law?

A. No.

Q. Why not?

A. I would be as good as dead.

Q. Why did you testify now, because you sympathize with Mr. Farokh Reza Rafatjah?

A. No.

Q. What is your reason then?

A. I was tracked down by people he has recruited to find out what happened on November 3, 1979 at 6th and Catalina, Uniservice Car Wash in Los Angeles.

Q. Were you paid to testify today, if not were you promised anything in return?

A. I was not paid, but I was given the promise, Mr. Farokh Rafatjah would stop looking for me and my family and he would not help American agents or anyone else which could harm me or my family.

Q. Were you threatened personally or your family by Mr. Farokh Reza Rafatjah or his agents?

A. No, I was not, but I was told he would do everything in his power to surrender me to the american authorities, so I figured it was best to give my deposition instead.

Q. Do you have any sympathy or regrets what so ever for Mr. Farokh Reza Rafatjah for what happened to him on the night of November 3, 1979 at 6th and Catalina, Uniservice Car Wash in Los Angeles, California.

A. The only regret I have, is that I was told by Mr. Hassan Shahin that Mr. Farokh Reza Rafatjah would not be physically harmed in any way, only to make him fear for his life and his family, but apparently Big John and Joe did not have the same orders.

Q. Did you know a person by the name of Hassan Nazari and were you aware he was the true owner of Uniservice Car Wash located at 6th and Catalina, Los Angeles, California on the night of November 3, 1979.

A. No.

Q. No to both questions?

A. Yes, I do not know Mr. Nazari or his affiliation to Uniservice Car Wash.

Q. Do you know that now?

A. No. I believe this completes this deposition. Thank you Mr. Mobares for your cooperation.

TEHRAN)
)
COUNTRY OF IRAN)

I, H. RAJAI, Attorney at Law, Country of Iran certify:

THAT prior to being examined, SAID MOBARES, the witness named in the foregoing deposition, was by me, sworn to testify the truth, the whole truth, and nothing but the truth;

THAT said deposition was taken before me at the time and place herein stated and was taken by me, thereafter transcribed into typewriting under my direction and supervision and is a true record of the testimony given by the witness;

THAT is was stipulated by me that the deposition may be read, corrected and signed by the witness under penalty of perjury;

I FURTHER CERTIFY that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

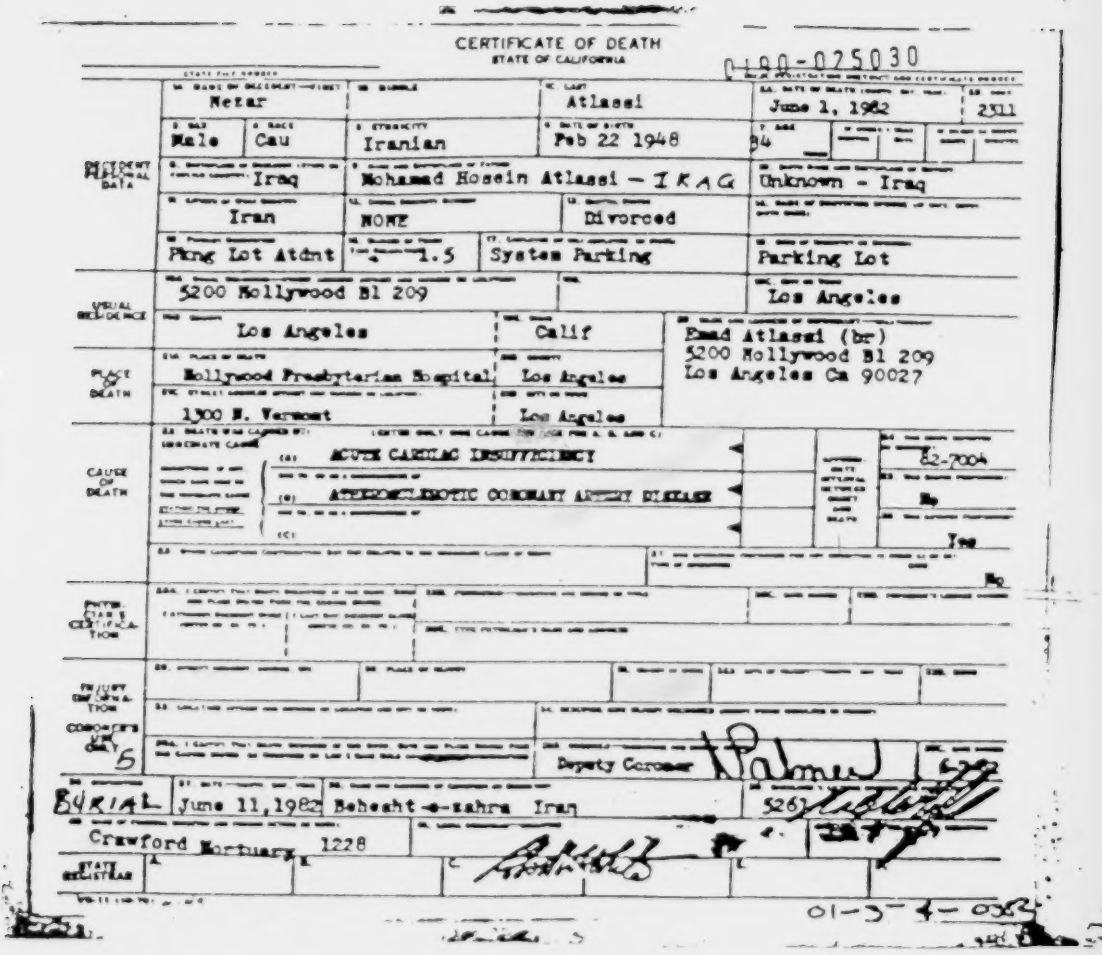
IN WITNESS WHEREFOR, I have hereunto subscribed my name this 20th day of January, 1985.

H. Rajai
Attorney at Law
Tehran, Iran

The undersigned, being fully aware of the penalties of perjury, hereby affirms the truth and veracity of the foregoing testimony.)

Executed at Tehran, Iran, on this 20th day of January, 1985

Signature:/S/_____
SAID MOBARES



CERTIFICATE OF DEATH
STATE OF CALIFORNIA

0100-025030

Nezar		Atlassi	June 1, 1982		2311
Male	Cau	Iranian	Feb 22 1948	34	
Iraq	Mohamad Hosein Atlassi – I K A G		Unknown - Iraq		
Iran	NONE	Divorced			
Pkng Lot Atdnt	1.5	System Parking	Parking Lot		
5200 Hollywood Bl 209			Los Angeles		
Los Angeles	Calif	Emad Atlassi (br) 5200 Hollywood Bl 209 Los Angeles Ca 90027			
Hollywood Presbyterian Hospital	Los Angeles				
1300 N. Vermont	Los Angeles				

CAUSE OF DEATH

(a) ACUTE CARDIAC INSUFFICIENCY

(b) ATHEROSCLEROTIC CORONARY ARTERY DISEASE

(c)

82-7004

No

Yes

No

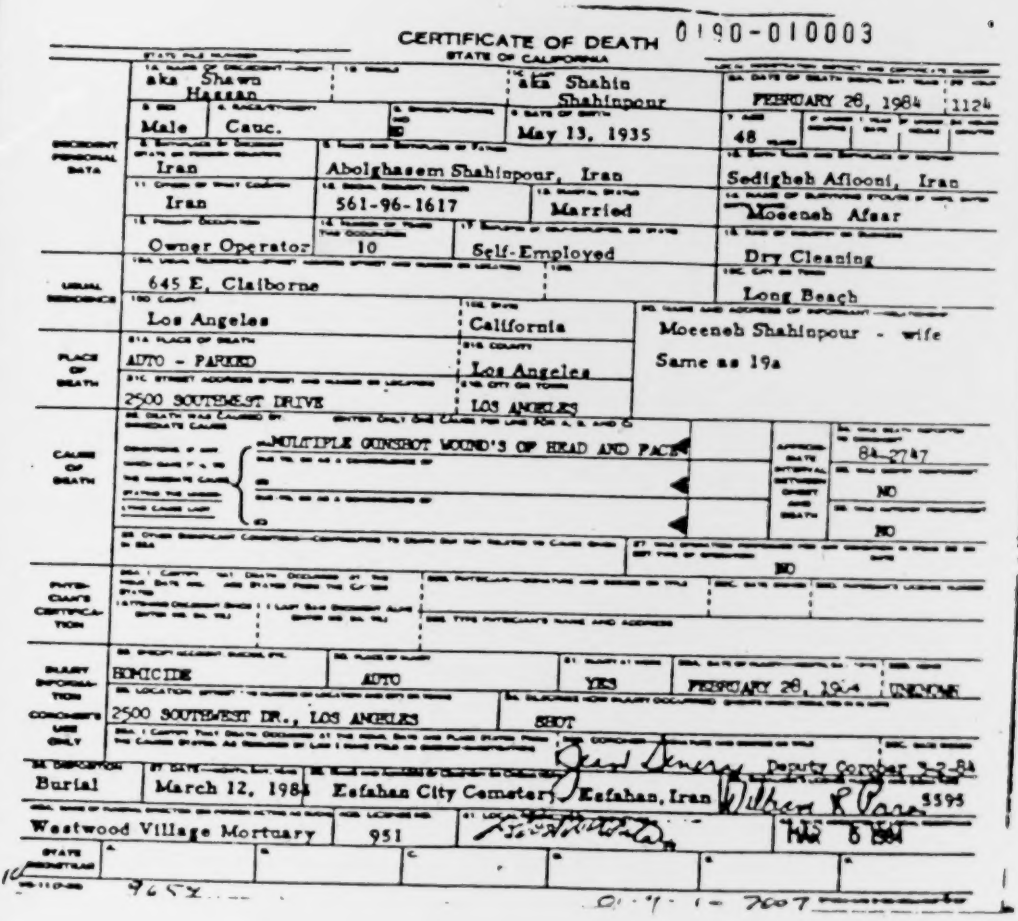
Deputy Coroner Palmer

BURIAL June 11, 1982 Behesht-e-zahra Iran

526

Crawford Mortuary 1228

01-3-4-052



CERTIFICATE OF DEATH 0190-010003
STATE OF CALIFORNIA

1a. NAME OF DECEDENT (First)	1b. (Middle)	1c. (Last)	2a. DATE OF DEATH (Month, Day, Year)	2b. HOUR	
aka Shawn Hassan		aka Shahin Shahinpour	FEBRUARY 28, 1984	1124	
3. SEX	4. RACE/ETHNICITY	5. DATE OF BIRTH	6. AGE		
Male	Cauc.	May 13, 1935	48		
7. BIRTHPLACE (State or Foreign Country)	8. NAME AND BIRTHPLACE OF FATHER	9. NAME AND BIRTHPLACE OF MOTHER			
Iran	Abolghasem Shahinpour, Iran	Sedigheh Aflooni, Iran			
11. CITIZEN OF WHAT COUNTRY	12. SOCIAL SECURITY NUMBER	13. MARITAL STATUS	14. NAME OF SURVIVING SPOUSE (If wife, give maiden name)		
Iran	561-96-1617	Married	Moeeneh Afsar		
15. USUAL OCCUPATION	16. KIND OF BUSINESS/INDUSTRY	17. BUSINESS OR EMPLOYER	18. NAME OF FATHER OR BUSINESS		
Owner Operator	10	Self-Employed	Dry Cleaning		
19a. USUAL RESIDENCE (Street and Number)	19b.	19c. CITY OR TOWN			
645 E. Claiborne		Long Beach			
19d. COUNTY	19e. STATE	19f. NAME AND ADDRESS OF INFORMANT (Relationship)			
Los Angeles	California	Moeeneh Shahinpour - wife			
20a. PLACE OF DEATH	20b. COUNTY	Same as 19a			
AUTO - PARKED	Los Angeles				
20c. STREET ADDRESS (If not in hospital, give location)	20d. CITY OR TOWN				
2500 SOUTHWEST DRIVE	LOS ANGELES				
21. DEATH WAS CAUSED BY (Enter only one cause per line for a, b, and c.)			22a. WAS DEATH REPORTED BY MEDICAL EXAMINER?	22b. CASE NUMBER	
IMMEDIATE CAUSE	MULTIPLE GUNSHOT WOUND'S OF HEAD AND FACE			84-2747	
DUE TO, OR AS A CONSEQUENCE OF			AUTOPSY PERFORMED?	NO	
DUE TO, OR AS A CONSEQUENCE OF			WERE FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH?	NO	
23. OTHER SIGNIFICANT CONDITIONS—CONDITIONS TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN 21			24. IF FEMALE, WAS DEATH WITHIN 1 YEAR OF PREGNANCY?		
			NO		
25a. PHYSICIAN'S CERTIFICATION: I certify that I attended the deceased from (Date) to (Date) that I last saw the deceased alive on (Date) and that death occurred at the time, date and place and due to the cause(s) stated.			25b. DATE SIGNED	25c. LICENSE NUMBER	
25d. SIGNATURE, DEGREE OR TITLE			25e. NAME AND ADDRESS OF PERSON CERTIFYING CAUSE OF DEATH		
26. MANNER OF DEATH	27a. PLACE OF INJURY	27b. DID INJURY OCCUR IN THE COURSE OF EMPLOYMENT?	27c. DATE OF INJURY (Month, Day, Year)	27d. HOUR	
HOMICIDE	AUTO	YES	FEBRUARY 28, 1984	UNKNOWN	
28. LOCATION OF INJURY (Number and Street or Rural Route Number, City or Town, State)		29. DESCRIBE HOW INJURY OCCURRED			
2500 SOUTHWEST DR., LOS ANGELES		SHOT			
30. I certify that death occurred at the time, date and place stated.		31. CORONER		32. DATE SIGNED	
		Jerd Denery	Deputy Coroner	3-2-84	
33. DISPOSITION	34. DATE	35. NAME OF CEMETERY OR CREMATORY	36. LOCATION (City or Town, State)	37. FUNERAL DIRECTOR	38. LICENSE NUMBER
Burial	March 12, 1984	Esfahan City Cemetery	Esfahan, Iran	Wilbert R Pare	5595
39. NAME OF FUNERAL ESTABLISHMENT	40. LICENSE NUMBER	41. LOCAL REGISTRAR		42a. DATE RECEIVED BY LOCAL REGISTRAR	42b.
Westwood Village Mortuary	951			MAR 8 1984	
STATE REGISTRAR					

9657

0190-010007

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 412 Marsh Street, San Luis Obispo, Ca.

On July 3, 1989, I served the within Petition For Review on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Luis Obispo, CA addressed as follows:

John J. Cochran
County Clerk
Criminal Courts Building
210 W. Temple St., Rm. M-6
Los Angeles, CA 90012
for delivery the Honorable Ernest M. Hiroshige

Deputy District Attorney
Hyatt Seligman
210 W. Temple Street
Los Angeles, CA 90012

John Van De Kamp
Attorney General's Office
3580 Wilshire Blvd., Rm. 600
Los Angeles, CA 90010

Clerk of the Court of Appeal
3580 Wilshire Blvd.
Los Angeles, CA 90010

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 1989 at San Luis Obispo, CA.

/s/_____
KIM STANLEY